IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/03/2003

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THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 1921 of 1991

1. Soorattaiannan @ Sengalaiyappa
Gounder
2. Kandaswami
3. Shanmugam ... Appellants

-Vs-

S. Natarajan ... Respondent

Appeal under Section 100 of CPC against the Decree and Judgment dated 12-12-1991 made in A.S. No. 215 of 1991 on the file of the Principal Subordinate Judge, Coimbatore confirming the Decree and Judgment made in O.S. No. 328 of 1980 on the file of I Additional District Munsif, Coimbatore.

!For Appellants : Mr. Jayaseelan for Mr. Mohan

^For Respondent : Mr. V. Nicholas

:JUDGMENT

The defendants in the suit are the appellants herein. The present second appeal has been filed against the concurrent finding of both the courts below.

2. The respondent herein has filed the suit for bare injunction to restrain the appellants from interfering with his peaceful possession and enjoyment of the suit property. The appellants herein have contested the suit that they are cultivating tenant and the civil Court has no jurisdiction.

3. Before the trial court, the respondent herein has marked Exs. A1 to A30 and examined himself as PW1 and one Sundaram as PW2. The appellants herein have marked Exs. B1 to B9 and examined the 2nd Defendant as DW1 and Nanjukutti Gounder, Velumani and Parimalam as DWs 2 to 4 respectively. The trial court, after consideration of the oral and documentary evidence has decreed the suit as prayed for. Aggrieved by the decree and judgment passed by the trial court, the appellant herein has preferred A.S. No. 215 of 1991 on the file of the Principal Subordinate Judge, Coimbatore, which dismissed the appeal confirming the decree and judgment passed by the trial court, hence this second appeal.

4. At the time of admission of this second appeal, the below mentioned substantial questions of law are framed for consideration.

i) Whether the courts below have committed an illegality in not framing an issue or a point for want of jurisdiction of civil Court to entertain the suit when the defendants sought protection under the Tamil Nadu Cultivating Tenants Protection Act and when a petition in TR No. 43 of 1987 was filed in 1987 itself to record their names as cultivating tenants?

ii) Whether the courts below have committed an illegality in trying the suit which it has no jurisdiction in view of the fact that a petition under the Tamil Nadu Agricultural Tenancy Record Act was filed by the appellants as early as 1987 and when the same is still pending?

5. The learned counsel for the appellants submitted as follows:-

The courts below failed to note that the appellants are in possession of the suit property. Exs. B4 to B8 are receipts issued by the Electricity Board to the appellants relating to the suit property. The ration card produced by the appellants to prove that they were in possession of the suit property which was erroneously rejected by the courts below. The courts below failed to appreciate the point that the petition in TR No. 43 of 1987 to register the name of the appellants as cultivating tenants has been filed before filing the suit and civil Court has no jurisdiction and prayed for setting aside the Decree and Judgment passed by the courts below.

6. Mr. Nicholas, learned counsel appearing for the respondent argued that the appellants approached the respondent to lease out the suit lands, which was declined. The appellants attempted to interfere with his possession, hence the suit was filed. Learned counsel further argued that the courts below have rightly found that the documents relied on by the appellants namely electricity receipts and ration card are not relating to suit property, but the documents filed by the respondent prove that he has been in possession of the suit property and prayed for dismissal of the second appeal.

7. The respondent herein claims title over the suit property based on Exs. A1 and A2 which were not disputed by the appellants herein. Though the appellants claim that they are the lessees and in possession of the suit property, the Chitta Ex.A23, Adangal Exs. A11 to A22 and Kist receipts Ex. A3 to A10, A24 and A25 issued in respect of the property are in the name of the respondent herein. Exs. A26 to A30 are the receipts issued by Thudiyalur Co-operative Farmers Seva Sangam in the name of the respondent herein for hiring tractor to plough the suit property which are not disputed by the appellants by letting in any oral or documentary evidence. Ex. B4 to B8, payment of electricity receipts issued in the name of appellants are not relating to suit properties. Similarly, Exs. B1 and B2 voters list and Ex.B3 identity card issued to the appellants are no way related to suit properties.
8. DW1 in his evidence has stated that T.V.S. Nagar is situate one kilometer away from Goundanpalayam and Edayarpalayam and T.V.S. Nagar are different places. Whereas in Ex.B9 ration card the address is mentioned as No.14, Erangattu Kottam, Edayarpalayam, T.V.S. Nagar, hence the Courts below

held that Ex.B9 is not acceptable. The courts below pointed out that Ex.B9 did not help the appellants to prove that the suit property was in their possession. Though DW2 and DW3 in their evidence have stated that their lands are situated next to the suit property, the could not give the details of boundaries to the suit property or the crops cultivated in it and therefore their evidence was eschewed from consideration by the Courts below. The first Appellate Court after careful consideration of oral and documentary evidence has confirmed the Decree and Judgment passed by the trial court.

9. It is brought to the notice of this Court that the first Appellant herein has filed a writ petition before this Court in WP No. 814 of 1995 against the Tahsildar and Record Officer, Coimbatore North and others claiming themselves to be cultivating tenants and to set aside the order passed by the Additional District Collector confirming the order passed by the Special Deputy Collector setting aside the order passed by the Record Officer / Tahsildar holding that the appellants are tenant. This Court, by order dated 05-07-2002 dismissed the writ petition and confirmed the order passed by the revisionary authority and appellate authority holding that no written proof of lease agreement or adangal was produced by the appellants herein but the respondent proved his possession. The appellants have not filed any appeal against the order passed in the writ petition as such it reached finality.

10. The petition in TR No. 43 of 1987 was filed in 1987 which is after filing of the suit in the year 1980. NO material produced by the appellants that they had sought for a remedy under Section 6-A of the Tamil Nadu Cultivating Tenants Protection Act before the courts below or proved by affidavit or otherwise that they are cultivating tenants entitled to the benefits of the said Act. On perusal of material records, I am of the considered view that that the appellants have not satisfied the conditions that they are cultivating tenants, entitled to protection under the Act and they must on transfer of the proceedings to the revenue officials be in a position to obtain one or other of the statutory reliefs provided in their favour under the Act. Without concurrence of these three conditions, no transfer should be ordered by the Civil Court under Section 6-A of the Act.

11. Except a mute ground in the memorandum of grounds of first appeal, nothing could be seen that the appellants have initiated any steps to attract the applicability of Section 6-A of the Act. Hence, I answer both the substantial questions of law against the appellants herein.

12. Both the Courts below after careful consideration of the materials available before it have rejected the claim of the appellants herein and I do not find any infirmity in the well considered findings of the Courts below.

With the result, the second appeal fails, liable to be dismissed and accordingly dismissed. No costs.

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Index : Yes
Internet : Yes
To
1. The Principal Subordinate Judge
Sub-Court
Coimbatore

2. The I Additional District Munsif
District Munsif Court
Coimbatore

3. The Record Keeper
Vernacular Records Section
High Court
Madras 600 104